

08 MAY 2006



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

OSHA LIANG L.L.P.
1221 MCKINNEY STREET
SUITE 2800
HOUSTON TX 77010

In re Application of
LIU
Application No.: 10/523,439
PCT No.: PCT/FR03/02133
Int. Filing Date: 09 July 2003
Priority Date: 29 July 2002
Attorney's Docket No.: 17170/008001
For: ELECTROMAGNETIC RETARDER FOR A
VEHICLE PROVIDED WITH A SPEED
INCREASING UNIT

DECISION

This decision is in response to applicant's "RENEWED PETITION UNDER 37 C.F.R. 1.10(d)" filed on 17 March 2006.

BACKGROUND

On 09 July 2003, applicants filed international application PCT/FR03/02133, which designated the U.S. and claimed a priority date of 29 July 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 26 February 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 31 January 2005 (29 January 2005 being a Saturday).

On 29 January 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 August 2005, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for filing the oath or declaration later than thirty months from the earliest priority date were required. This NOTIFICATION set a two month extendable period for reply.

On 06 September 2005, applicant submitted a response which included, *inter alia*, a declaration of the inventor and the surcharge under 37 CFR 1.492(e).

On 06 September 2005, applicant also submitted a "REQUEST TO AFFORD FILING DATE UNDER 37 C.F.R. § 1.10", which was treated as a petition under 37 CFR 1.10(d).

On 21 February 2006, a decision was mailed dismissing applicant's petition under 37 CFR 1.10(d) without prejudice for failure to provide evidence from the USPS or any evidence that came into being after deposit and within one business day of the deposit of the correspondence with the USPS, as required by 37 CFR 1.10(d)(3).

On 17 March 2006, applicant filed the instant "RENEWED PETITION UNDER 37 C.F.R. 1.10(d)" which was accompanied by, inter alia, the original Customer Copy of Express Mail mailing label #EV535680024US which bears a USPS date stamp of 28 January 2005 and a report from the U.S. Postal Service indicating acceptance of Express Mail mailing label #EV535680024US in Houston, Texas on 28 January 2005.

DISCUSSION

Petition Under 37 CFR 1.10(d)

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As noted in the decision mailed 21 February 2006, a satisfactory showing under 37 CFR 1.10(d)(1) and (2) has been made.

A satisfactory showing under 37 CFR 1.10(d)(3) has now been made as well.

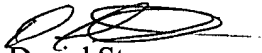
Declaration of Inventor

The declaration of the inventor filed 06 September 2005 is in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, applicant's petition under 37 CFR 1.10(d) requesting that the application papers and the basic national fee be accorded a receipt date of 28 January 2005 is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including (1) changing the receipt date on the application papers presently stamped 29 January 2005 to **28 January 2005** and (2) the accordation of a 35 U.S.C. §§371(c)(1), (c)(2), and (c)(4) date of **06 September 2005**.



Daniel Stemmer

Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

Telephone: (571) 272-3301

Facsimile: (571) 273-0459